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*In the Matter of the Award made by the Senate of the United States in favor of the Choctaw Nation of Indians, under and by virtue of the Treaty between the said Nation, and the United States of June 22, 1855.*

Whether this award in honor and good faith imposes an obligation on the Government and people of the United States to fulfil the same is a question which is susceptible, as is believed, of a satisfactory solution, on considerations that can be comprised within a brief space. They are as follows, to wit:

1. That this nation of Indians were, at the date of the above named treaty, and for more than a third of a century, had been urging on the Government of the United States a claim for a large sum of money, accruing from the favails of lands to the amount of 10,423,139.69-100 acres transferred to the United by the treaty of 27th September, 1830, is a fact disclosed by a vast number of public documents, now in our executive and legislative archives, and is too notorious to make the details necessary or important.

2. That there was at the same date in regard to this matter a difference between the United States and this Choctaw Nation, which they could not settle by negotiation, appears from the treaty first above named.

3. Therefore the Government of the United States, being desirous of doing justice to the claimants, accorded to them the privilege of an arbitrament by an august tribunal, which they cordially accepted, and the parties having agreed upon the terms the same were introduced into the treaty of June 22, 1855, as follows:

ARTICLE XI. The Government of the United States not being prepared to assent to the claim set up under the treaty of September 27, 1830, and so earnestly contended for by

the Choctaws as a rule of settlement, but justly appreciating the sacrifices, faithful services, and general good conduct of the Choctaw people, and being desirous that their rights and claims against the United States shall receive a just, fair, and liberal consideration, it is therefore stipulated that the following questions be submitted for adjudication to the Senate of the United States:

"First. Whether the Choctaws are entitled to, or shall be allowed, the proceeds of the sale of the land ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the lands remaining unsold, in order that a final settlement with them may be promptly effected; or,

"Second. Whether the Choctaws shall be allowed a gross sum in further and full satisfaction of all their claims, national and individual, against the United States; and, if so, how much."

ARTICLE XII. In case the Senate shall award to the Choctaws the net proceeds of the lands ceded as aforesaid, the same shall be received by them in full satisfaction of all their claims against the United States, whether national or individual, arising under any former treaty; and the Choctaws shall thereupon become liable and bound to pay all such individual claims as may be adjudged by the proper authorities of the tribe to be equitable and just; the settlement and payment to be made with the advice and under the direction of the United States agent for the tribe; and so much of the fund awarded by the Senate to the Choctaws as the proper authorities thereof shall ascertain and determine to be necessary for the payment of the just liabilities of the tribe shall, on their requisition, be paid over to them by the United States. But should the Senate allow a gross sum in further and full satisfaction of all their claims, whether national or individual, against the United States, the same shall be accepted by the Choctaws, and they shall thereupon become liable for and bound to pay all the individual claims as aforesaid; it being expressly understood that the adjudication and decision of the Senate shall be final.

(11 Stat. at Large, page 611.)

4. The Senate being by far the most important legisla-



tive body on this continent, and representing at one and the same time the sovereignty of the States, and the interests and will of a vast people, and composed of accomplished statesmen and learned jurists, with a high sense of obligation on the one hand to appreciate properly the rights of the Government and people of the United States, and on the other to accord to this Choctaw Nation that full measure of justice which an enlightened and beneficent <sup>ent</sup> public sentiment would be certain to approve, undertook this most delicate trust, and had it under consideration at different times during a period of three years when, that is to say, on the 9th day of March, 1859, they made and rendered their award as follows:

Whereas the eleventh article of the treaty of June 22, 1855, with the Choctaw and Chickasaw Indians, provides that the following questions be submitted for decision to the Senate of the United States:

“First. Whether the Choctaws are entitled to or shall be allowed the proceeds of the sale of the lands ceded by them to the United States by the treaty of September 27, 1830, deducting therefrom the costs of their survey and sale, and all just and proper expenditures and payments under the provisions of said treaty; and, if so, what price per acre shall be allowed to the Choctaws for the land remaining unsold, in order that a final settlement with them may be promptly effected; or,

“Secondly. Whether the Choctaws shall be allowed a gross sum in *further* and full satisfaction of *all* their claims, national and individual, against the United States; and, if so, how much?”

*Resolved.* That the Choctaws be allowed the proceeds of the sale of such lands as have been sold by the United States on the 1st day of January last, deducting therefrom the costs of their survey and sale, and all proper expenditures and payments under said treaty, excluding the reservations allowed and secured, and estimating the scrip issued in lieu of reservations at the rate of \$1.25 per acre; and, further, that they be also allowed twelve and a half cents per acre for the residue of said lands.

*Resolved.* That the Secretary of the Interior cause an account to be stated with the Choctaws, showing what

amount is due them according to the above-prescribed principles of settlement, and report the same to Congress.  
(Senate Journal, 2d session 35th Congress, page 493.)

5. Of the whole quantity of lands, (being a little under ten millions and a half of acres,) the United States, on January 1, 1859, had sold 5,912,664.67 acres, and had realized therefrom \$7,556,578.05, and there then remained unsold 4,176,374.04 acres.

In the form of an award reported on the 15th day of February, 1859, by the Senate Committee on Indian Affairs, a clause was inserted to the effect that in the judgment of the Senate, "the lands remaining unsold were worth nothing after deducting expenses of sale," which the Senate, being anxious to do full and exact justice to the Choctaws, struck out and inserted in lieu thereof the provision which appears in the award, to wit, that they be "allowed twelve and a half cents per acre for the residue of said lands," meaning the lands unsold.

6. In the above award, the Senate directed the Secretary of the Interior to state the account, as between the parties, upon the principle of settlement then announced, and to report the same to Congress.

This was imposing upon the officer named, a mere ministerial duty which it was competent for the Senate, in its character of arbitrator, to do, as is well settled in the Law of Arbitrament.

7. In conformity to the principles laid down in the above award, the Hon. Secretary of the Interior did, as directed by the Senate, proceed to state the account, under the date of March 22, 1860, and therein set down in favor of the Choctaws the following credits:

The proceeds of the sales of the lands sold	
up to January 1, 1859, viz, 5,912,664.63	
acres, amounted to.....	\$7,556,578.05.
The residue of said lands, viz, 4,176,374.04	
acres, at 12½ cents per acre, amounted to	522,046.75.
	<hr/>
	\$8,078,614.80

He next states the debit side, which consists of a great variety of items unnecessary to be here presented. It is sufficient to say that the aggregate was \$5,997,367.50. He then strikes a balance, deducting the debits from the credits, and concludes in the following words and figures: "*Leaves a balance due the Choctaws of \$2,981,247.30.*"

This account the Hon. Secretary reported to Congress, as directed by the award, on the 28th day of May, 1860, that is to say, during the 1st Session of the 36th Congress.

8. The Choctaw Nation as such, and their venerable representative in this city who has been engaged for nearly one-third of a century in efforts to procure the allowance of this claim, at once acquiesced in the result, though by no means satisfied therewith, but did so in the full belief that the United States would at an early day recognize the obligation imposed by the award, and pay the amount found due. Little did they anticipate, that at the end of the long period of fifteen years, they would find themselves under the necessity of making efforts to realize that object, just as strenuous as would have been required, had there been no award. Verily! "hope deferred maketh the heart sick."

9. The action of the Senate, on this subject, not only received the acquiescence of the Choctaws but was substantially sanctioned by the two Houses of Congress at the Second Session of the 36th Congress, by the introduction into the Indian Appropriation Bill, of March 2d, 1861, of the following provisions:

For payment to the Choctaw Nation or tribe of Indians, on account of their claim under the eleventh and twelfth articles of the treaty with said nation or tribe, made the twenty-second of June, eighteen hundred and fifty-five, the sum of five hundred thousand dollars; two hundred and fifty thousand dollars of which sum shall be paid in money, and for the residue, the Secretary of the Treasury shall cause to be issued to the proper authorities of the nation or tribe, on their requisition, bonds of the United

States, authorized by law at the present session of Congress: *Provided*, That in the future adjustment of the claim of the Choctaws, under the treaty aforesaid, the said sum shall be charged against the said Indians. (Statutes at Large, Vol. 12, p. 238.)

Here it will be observed that there is an express reference to the claim of the Choctaws, under the 11th and 12th Articles of the Treaty of the 22d of June, 1855, which could be nothing else but a claim for the fulfilment of the award made by the Senate in their favor; and, also, that Congress therein makes an appropriation for a considerable percentage of that award, to wit, \$500,000; one-half in cash, the other half in bonds of the United States, and both payable at once.

How could Congress more emphatically sanction the proceedings of the Senate in the premises? The appropriation being made at the close of Mr. Buchanan's Administration, the duty to make the payments above directed became incumbent upon Mr. Lincoln and his administration, and the distinguished statesman who was his first Secretary of the Treasury and afterwards became Chief Justice of the United States, had no difficulty in recognizing the delegate of the Choctaw Nation, so long a resident here, as being abundantly authorized to receive in their behalf the cash payment which he, the Secretary, made at an early day to that delegate, and took his receipt therefor in behalf of said nation, so that we have emphatically a sanction of this award, not only by the legislative, but by the Executive Department of our Government.

10. Soon after the cash payment was made the country became deeply involved in the late deplorable civil war and further action by the Executive, under the provision was properly, if not necessarily postponed until its close. Soon after which application was made to the Treasury Department, by the delegate for the one quarter of a million in bonds, but obstacles were thrown in his way which

the undersigned will not enter into, he purposely abstains therefrom, but will add, that these people not being able with every endeavor to obtain the balance of the appropriation, the subject attracted the attention of Congress, and thereupon that body inserted in the Indian appropriation bill of the 3d of March, 1871, (2d Sess., 41st Congress,) the following provisions. "The Secretary of the Treasury is hereby authorized to issue to the Choctaw tribe of Indians, bonds of the United States, to the amount of two hundred and fifty thousand dollars, as directed by the act of March 2d, 1861, entitled an act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations, with various tribes.

Here it will be observed, that Congress speaks of the act referred to as giving a direction to issue to the Choctaws, the amount of bonds, named for the purpose specified, that is to say "on account of their claim," under and by reason of the award, and having the impression that the then Honorable Secretary of the Treasury entertained doubts as to his authority in this regard, they determined to clear the subject of all difficulty and inserted the above provision in the Indian bill last specified for that purpose, so that at the expiration of ten years after the first sanction given by Congress to this award, we have another equally significant.

At the preceding session, to wit, on the 12th of July, 1870, when the civil appropriation bill was under consideration in the Senate, the Hon. Wm. A. Buckingham, then a member of the Committee on Indian affairs, and afterwards its chairman, having a just sense of the injustice done the Choctaws in this matter offered an amendment thereto nearly coincident in terms with the provision inserted in the Indian appropriation bill, of the 3d of March, 1871, already quoted, upon which he addressed the Senate as follows. "*I believe that this is an obligation which this Gov-*

*ernment owes just as clearly, just as righteously as I owed any debt which I ever contracted."*

Nothing could be more emphatic than this. No doubt he had given this entire subject a profound consideration, and considering his high intelligence, untiring industry, and spotless integrity, his opinions in this regard cannot fail to have great weight with Congress, and particularly with the Senate. He was a man of few words, and of noble deeds not a few. With a beneficence ever active and having for its object in a marked degree the poor and the defenceless, his sudden removal by death so deeply lamented by his honorable associates in the Senate, must be deemed an irreparable loss to humanity.

The undersigned presents, in the above exposition, all the considerations which are in his judgment essential for the formation of a sound judgment by those who have the responsibility of acting on this entire matter. He maintains that the rights of the one party, and the obligations of the other are conclusively settled by the award of the Senate, and that the United States are bound in as high a degree to pay to the Choctaws the amount found due, to wit, \$2,981,247.30, as they would have been had a stipulation to pay that amount been introduced into the treaty of June 22d, 1855, and had articles 11 and 12 been omitted.

The undersigned insists that the moment this award was enunciated, the result became a treaty obligation, and assumed precisely the character which the award of the arbitrators selected by the United States and Great Britain, to pass upon the differences of the two powers, had when the same was made and published at Geneva. It then became a treaty obligation, as between the United States and Great Britain, as in this case the award of the Senate is a treaty obligation in favor of the Choctaws, binding the United States. It is true that Great Britain had, in a physical sense, the power to spurn that obligation, but in such case the perfidy would have instantly invoked a dec-

laration of war by the United States, who are abundantly competent to assert their own rights. In this case, however, no such assertion for obvious reasons is possible, whatever the perfidy may be.

But let us look a little more closely into this subject with a view to ascertain precisely how the matter stands: The Government of the United States, upon principles of the common law, enjoys a complete immunity from litigation, and cannot be arraigned in a court of justice by citizens, however aggravated the injuries may be, which they have received through the agency of the public authorities or otherwise. All they can do is to resort to supplication or, in other words, prefer a petition to Congress for a redress of grievances. It is doubtful whether the Indian race are in as good a situation as citizens, for they are not recognized as such, but certainly they are in no better. The United States thus enjoying this immunity in a legal sense from responsibility for wrongs, however committed, particularly in the case of these Indian nations or tribes, concluded, in a spirit of amity and justice, to come down from this high position and to become a party like any private citizen to a friendly lawsuit with this Choctaw Nation in the form of an arbitrament as arranged by the treaty of 1855.

Under these circumstances, the United States are to be regarded as private citizens, resorting to such a tribunal, with other citizens, for an adjustment of differences and in the case under consideration, the rights accruing in favor of the latter, the Choctaws, and the obligations incurred by the former, the United States, are to be appreciated upon the principles of law and equity, which would govern in any ordinary case.

The undersigned here emphatically takes the ground that in every such case the award made in conformity to the submission is final and conclusive on the parties. To go behind the same with a view to make further enquiries,

either as to law or facts is wholly inadmissible. Arbitrators are at liberty to make either law or equity or a combination of both the rule for an adjustment of the rights of the parties. There can be no enquiry in regard to their appreciation of the evidence, unless the result to which they have come is so contrary thereto as to indicate plainly partiality or corruption on their part.

Let us attend to the inculcations of the pre-eminent Chief Justice Shaw of the Supreme Court of Massachusetts on this important subject as follows :

" In general, arbitrators have full power to decide upon questions of law and fact which directly or indirectly arise in considering and deciding the questions embraced in the submission. Their decision, both as to the one and the other within the scope of their authority, is conclusive upon the same principle that a final judgment of a court of last resort is conclusive, which is that the party against whom it is rendered can no longer be heard to question it. It is within the principle of *res adjudicata* ; it is the final judgment for that case between those parties. "

Boston Water Power Co. *vs.* Grey, 6 Mete. Rep., p. 131.

Let us also recur to the views of the Supreme Court of the United States, as expressed by Mr. Justice Grier :

" Arbitrators are judges chosen by the parties to decide the matters submitted to them, finally and without appeal. As a mode of settling disputes, it should receive every encouragement from courts of equity. If the award is within the submission, and contains the honest decision of the arbitrators, after a full and fair hearing of the parties, a court of equity will not set aside for error either in law or fact. A contrary course would be a substitution of the judgment of the chancellor in place of the judges chosen by the parties, and would make the award the commencement, and not the end of litigation." Burchell *vs.* Marsh and Others, 17 How., U. S. Rep., 344, 349.

An immense number of authorities could be cited to the same effect.



Why, then, are not the United States conclusively bound by the award, and how is it that the idea is entertained that this subject can be taken up *ab ovo*? That the result, if adverse to the Choctaws, would be held to be binding on them, is certain. Have the United States peculiar prerogatives and privileges in this regard? There is in the treaty of September 22, 1855, an undertaking by the United States to abide the award of the Senate and to carry the same into full effect. It is true that we do not find this expressed in so many words in the 11th and 12th articles, but the undertaking arises out of the nature of the transaction, and is, in effect, written in those articles with a pencil of light. Would any citizen, having the slightest desire that the honor of our Government and the character of our people for rectitude should remain untarnished, be willing to have the treaty construed thus? As for you, the Choctaws, the action of the Senate, if adverse to your claim, shall be binding, but if contrary to our view of the merits, we are to have a large liberty, that action shall be binding or not binding; we will pay or not pay in the exercise of our sovereign will and pleasure as we may see fit. What would this be but the assumption that these Indian nations have no rights, not even under treaties which this great republic is bound to respect? Any such treatment of the subject would provoke the indignation of good men throughout the civilized world, and attach to the American name and character indelible disgrace.

The perverted notions which have prevailed, and may still prevail, to some extent, in regard to the conclusiveness of awards, and particularly of that in favor of the Choctaws, received not long since a remarkable illustration in the proceedings of a subordinate officer of the Treasury Department. He, in the first place, with astonishing assurance, assumed the character of a high judicial functionary, whether of law or equity, or neither, it is difficult to determine, and in the next arrogated to himself the power

of overhauling the proceedings of the Senate in this matter of the Choctaw award, and to bring the same to the test of his superior acuteness, sagacity, and wisdom. What if the seats of the Senate Chamber were largely occupied by lawyers of great eminence, and what if that body was engaged for nearly three years in an anxious consideration of the subject, and had deliberately settled the principles upon which their award should be based, and what if the Hon. Secretary of the Interior took another year to state the account for the purpose of consummating that award, and what if Chief Justice Shaw was all the while ringing in the ears of the illustrious Banfield, *res adjudicata*; nothing can arrest his career; he plunges headlong into the midst of this vastly complicated subject, and concludes by blowing up the award of the Senate sky high. All this his High Mightiness deemed it proper to do without giving any notice to the Choctaw delegate, or without affording him any opportunity to make explanations. He insists that the Senate was entirely wrong in regard to the conclusions which should be deduced from the evidence before it, consisting wholly of public documents, and that for this reason their award should be deemed a nullity. It is true that an arbitrator may enunciate a result so obviously incompatible with, or unauthorised by evidence as to justify the conclusion that he had treated the subject unfairly, or in other words that the award was the result of partiality or corruption. In such a case it would, and ought to be, set aside. But Banfield does not carry his lugubriousness to that extent. It is not a case of depravity on the part of the Senate, but of incapacity, and this he thinks he has shown conclusively, by the fact that the Senate did not treat the receipt given by the Choctaws in 1852 for \$872,000, for land scrip to that amount in value, as being a full satisfaction of their whole claim, when in fact it covered only a small part thereof. The undersigned invites particular attention to the following item entered in the

debit side of the account, as made out by the Hon. Secretary of the Interior, to wit.: "Scrip allowed in lieu of reservations, viz: 1,399,920 acres, at \$1.25 per acre, \$1,749,900, which the undersigned avers included the scrip in payment, of which the Choctaws received the sum of \$872,000, giving the receipt already named. Nothing can more strikingly illustrate the disingenuousness exhibited by this public functionary when he treats this transaction as being an effectual bar to any further claim by the Choctaws to the residue of the trust fund. But this explanation is wholly unnecessary, for the transaction here considered took place three years at least before the treaty of June 22, 1855 was made, and, of course, was comprised in the reference to the Senate, and is covered by their award. Nothing could be more commendable than for honorable members of both the Senate and House to feel a strong repugnance to a further increase of the public debt, now a great burthen on the industry of the country, and this may well regulate their course in reference to the future. It cannot, however, be expected that they, as just and reasonable men, will permit this feeling to give shape and direction to their treatment of the obligations of the past. The undersigned insists, that the moment the award of the Senate was rendered this Choctaw claim became a debt, with all the binding force of any bond issued by the Government and now held in Europe or elsewhere, and that for Congress to adopt the amendment to the Indian appropriation bill proposed in the Senate will not increase our national debt one penny. The Choctaws have obtained a judgment against the United States, in the manner and to the amounts stated, and all they ask is the execution of that judgment. This can only be accomplished by an appropriation, and as it is a treaty debt, it is pre-eminently fit to introduce the same into the Indian bill.

The undersigned regards it as peculiarly fortunate that the Senate should have the opportunity to take the initia-

tive on this subject. It may be worthy of the consideration of its honorable members, whether the dignity and high conservative character of that body will not be appropriately illustrated and sustained by giving full effect to its own judgment.

O! That the late Hon. Chairman of the Senate Committee on Indian Affairs could have been spared to co-operate in realizing an object, which the undersigned feels perfectly assured lay very near his heart.

WASHINGTON, *Feb.* 13, 1875.

TRUMAN SMITH,  
*Solicitor pro tem. for the Choctaws.*













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